

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE: PROCESSED EGG PRODUCTS</b>	:	
<b>ANTITRUST LITIGATION</b>	:	
		:
	:	<b>MDL No. 2002</b>
	:	<b>08-md-02002</b>
	:	
<b>THIS DOCUMENT APPLIES TO:</b>	:	
<b>ALL ACTIONS</b>	:	

**CASE MANAGEMENT ORDER NO. 16**

**AND NOW**, this 21st day of December, 2011, upon consideration of correspondence received from counsel dated December 1, 2011 and December 16, 2011, as well as the parties' December 5, 2011 monthly status report, it is hereby **ORDERED**:

**I. AMENDMENT OF PLEADINGS**

**A. By Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs**

Motions for leave to amend the Direct Purchaser Plaintiffs' current complaint or the Indirect Purchaser Plaintiffs' current complaint to add claims or defenses shall be filed on or before sixty (60) days after all decisions on motions to dismiss currently on the dockets of this case have been entered as to the complaint for which leave to amend is sought, unless leave of Court is granted upon a showing of good cause. By no later than that same 60-day deadline, if any Plaintiff Group does not intend to amend its complaint, that Group's Liaison Counsel shall notify the Defendants and the Court by letter of such decision, and Defendants will then respond to the current complaint within forty-five (45) days of such notice.

**B. By Direct Action Plaintiffs**

Paragraph 5 of Case Management Order No. 15 (Doc. No. 462) is AMENDED as to the timing for Defendants to answer, move, or otherwise respond to the Direct Action Plaintiff Complaints as follows:

By January 5, 2012, all Direct Action Plaintiffs, through a single letter sent by their Liaison Counsel, shall notify Defendants as to whether they intend to amend their respective complaints. If any Direct Action Plaintiff states that it will not amend, then Defendants will respond to that Direct Action Plaintiff's current

complaint by February 20, 2012. If any Direct Action Plaintiff notifies Defendants that it will amend its complaint, Defendants will respond to the amended complaint(s) within forty-five (45) days of filing of the amended complaint.

If any Direct Action Plaintiff states that it will amend its complaint, Direct Action Plaintiff Liaison Counsel and Defense Liaison Counsel shall confer as to the timing of when such amendment(s) might appropriately be filed. By no later than January 10, 2012, the parties shall jointly notify the Court by letter as to whether any and which Direct Action Plaintiffs intend to amend their respective complaints, and the parties may request the Court to enter an Order as to the timing for the filing of such amendment(s).

## **II. MEET AND CONFER ON THE ESTABLISHMENT OF A JOINT DOCUMENT DEPOSITORY**

A. By no later than January 16, 2012, the parties' Liaison Counsel (or designated representatives) shall meet and confer in-person or by telephone about the creation of a joint document depository. The parties shall inform the Court by letter of their mutual position on the appropriateness of a joint depository by no later than January 20, 2012. In the event that the parties disagree as to having a joint depository, or the parties mutually agree that a joint depository is inappropriate, the parties shall delineate to the Court the explicit reasons for their position(s), which shall include discussion of the relative savings, costs, benefits, and disadvantages of a joint depository.

B. Unless the parties stipulate, with the Court's approval, or the Court orders otherwise, the following shall apply to the creation of a joint document depository in this litigation:

1. The depository shall store all materials produced by parties and third-parties in this proceeding that may be needed for more than a single case, including documents, interrogatories, requests for admission, requests for production of documents, deposition transcripts, and similar materials. These materials shall be made available to any litigants in any case in the above-captioned litigation and to any litigants in any related state court litigation. The depository's hardware and software systems shall be capable of scanning, viewing, downloading, and printing documents from remote locations.

2. There will be an allocation of fees among the parties to operate the depository. The depository must not be operated as a "profit center." If any of the parties or parties' counsel has a monetary or other interest in the computer service or software provider(s) that the parties select to administer the depository, this must be disclosed in a letter to the Court after determining, assisted by Liaison

Counsel, all other parties' positions on the matter.

3. Each attorney/party seeking access to the depository must sign an agreement regarding rules of usage, production of confidential documents, and payment of fees.

4. A party fully satisfies its obligation to produce documents to the parties in all cases in this litigation by placing those documents in the depository and serving notice of this placement on counsel in all affected cases. Such notice shall identify the documents produced, using a unique alphanumeric identifier based upon the parties' agreed-upon numbering system, and notice shall be produced as documents are kept in the usual course of business or documents shall be organized and labeled to correspond with the categories in the request set for in Fed. R. Civ. P. 34(b).

5. Each party shall be responsible for delivering to the depository any documents produced in this proceeding pursuant to Fed. R. Civ. P. 45. The party noticing a deposition shall be responsible for delivering to the depository an transcription (including videotape) of any deposition taken in any of the consolidated cases. The party serving any objection, answer, or response to an interrogatory, Fed. R. Civ. P. 34 request, or request for admission in any of the consolidated cases shall be responsible for delivering a copy to the depository.

6. The depository shall be established and maintained by Defendants (or a designated third-party administrator), in consultation with Plaintiffs, in a manner to be agreed upon by the parties and approved by the Court.

7. Plaintiffs' Liaison Counsel (or a single designated representative) shall be responsible for monitoring the content of the depository and shall provide a periodic (weekly for th initial existence of the depository until a less frequent basis shall become appropriate) notification to all plaintiffs' counsel of the addition of materials to the depository, with a basic description of the newly-added materials.

8. Parties to the litigation may establish, at their own expense, private document depositories at other locations and make arrangements for obtaining documents for inclusion in those depositories as they see fit. The document depository as outlined in this Order, however, shall be the official document depository for all consolidated cases.

C. In the event that the parties mutually agree to create a joint electronic document depository, at the same meet and confer conference, they shall confer about the financing, design, and operation of the depository, and adhere to the following:

1. The parties shall endeavor to present to the Court, in the form of a proposed order/stipulation attached to the aforementioned letter, due by no later than January 20, 2012, which outlines a protocol for the depository, including a proposed agreement regarding rules of usage, production of confidential documents, and payment of fees, as well as the organization, categorization, and/or indexing of the parties' responses to the opposing parties' document requests. The proposed order/stipulation shall also include the parties' proposal to the Court of a formula for sharing the costs of maintaining the facility. If necessary, the parties may provide their own statements of any matters on which they disagree. In the event that the parties disagree as to the joint depository's protocols, management, financing, and so forth, the Court may refer the issues to the Special Master, Sandra A. Jeskie, Esquire.

2. In developing protocol for the depository, the parties shall consider potential protocols that would efficiently use technologies (such as Internet-based production) and that would facilitate the parties' prompt and effective access to the contents of the depository and reduce the parties' need to travel and examine documents. Any technology used must permit a hard copy of the document to be produced by the recipient.

### **III. MEET AND CONFER ON MATTERS RELATED TO DOCUMENT PRODUCTION AND EXAMINATION**

A. By no later than January 16, 2012, the parties' Liaison Counsel (or designated representatives) shall meet and confer in-person or by telephone about the following subjects relating to documents produced, examined, or otherwise used or referenced in the course of this litigation. The parties shall report to the Court by letter whether they have reached agreement as to each subject by January 20, 2012.

In their letter, the parties shall only generally and briefly inform the Court of the substance of their agreement or discussion *unless* they mutually propose that the Court enter an order, or approve of the parties' stipulation, concerning a given subject, in which case the parties shall attach to the letter a proposed form of order or stipulation. In the event that the parties disagree as to any subject, the differing parties may note their respective positions along with a brief explanation for any such differences so that the Court may ascertain the contours of the dispute in order to determine the appropriate course for resolution.

1. Numbering System. The parties shall develop and use a system for identifying by a unique number or symbol each document produced or referred to during the course of this litigation, including those withheld on the basis of privilege. This system shall be used by all parties and for all purposes throughout the case, including for use in depositions, dispositive motions, and trial. All

copies of the same document should ordinarily be assigned the same identification number.

2. Paragraphs 2.B, 2.C, 2.H., & 2.I in April 20, 2010 Order. The parties shall address any remaining unresolved issues relating to Paragraphs 2.B, 2.C, 2.H., and 2.I in the Court's April 20, 2010 Order (Doc. No. 320). In their letter, the parties shall inform the Court whether they propose that the Court enter an order, or approve of the parties' stipulation, concerning these subjects.

3. Multiple Requests and Coordination of Document Production. To the extent that this subject shall not already be addressed at the meet-and-confer concerning a joint document depository, the parties shall discuss possible protocols and/or procedures that facilitate the coordination and consolidation of requests for production and examination of documents to eliminate duplicative requests from the same party in this proceeding or in similar proceedings in other courts. These protocols and/or procedures shall address the production of documents and information that parties might produce in related litigation in proceedings in other courts, how such "related litigation" is defined, and the timing of such productions in this litigation. This discussion may be included as part of the meet-and-confer concerning a joint document depository. In their letter, the parties shall inform the Court whether they propose that the Court enter an order, or approve of the parties' stipulation, concerning these subjects, and they may propose any protocols or procedures on which they mutually agree in a proposed form of order attached to the letter.

4. Privilege Logs. The parties shall determine the information to be logged, format, and timing (*e.g.*, concurrent with the production of documents, *x* number of days after the start of discovery, etc.) for production of privilege logs. The parties shall consider whether they might agree to accept privilege logs that will initially classify categories or groups of withheld documents (*i.e.*, a categorical privilege log). *See, e.g.*, The Sedona Conference, *The Sedona Principles: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, cmt. 3.c. (2d ed. 2007). The parties shall inform the Court whether they propose that the Court enter an order, or approve of the parties' stipulation, concerning privilege logs, and, if so, attach to the letter a proposed form of order or stipulation.

5. Extraterritorial Discovery. The parties shall summarily determine if, at present, any party anticipates that there will be any discovery directed at witnesses, documents, or other evidence located outside the United States. In their letter, the parties shall inform the Court the results of their determination.

**IV. REPORT CONCERNING DISCOVERY DISPUTES OUTSIDE THE DISTRICT**

By no later than January 24, 2012, the parties shall jointly address their position in a letter to the Court whether the parties should be required to present all or certain types of discovery disputes between the parties and/or non-parties that could be filed in a court outside the Eastern District of Pennsylvania (*e.g.*, motions to compel or terminate a deposition, a motion for protective order, or a motion to quash, modify, or enforce a subpoena) only to this Court (where the action is pending) in accordance with the informal procedures generally described by the Court in the November 9, 2011 status conference (*i.e.*, by letter, after good faith meet and confer with the appropriate parties, with a telephone conference with the Court), and not to a court in the district where the deposition is being held or where a subpoena issued. *See* Fed. R. Civ. P. 26(c), 30(d), 37(a)(2), 45; *see also* 28 U.S.C. § 1407(b) (“The judge . . . to whom such actions are assigned . . . may exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.”).

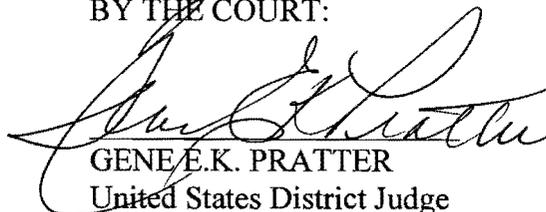
The parties shall also jointly propose in a proposed form of order protocols and/or procedures for promptly notifying the Court of discovery disputes between the parties and/or non-parties filed in a court outside the Eastern District of Pennsylvania.

**V. MATTERS RELATING TO DEPOSITIONS**

The Court will revisit with the parties the contours of any limitations and procedures with respect to depositions that remain in dispute by no earlier than the end of the first quarter of 2012. This will permit the parties to have the benefit of the information that they might acquire at the beginning of document production resulting from the possible interplay between document-related discovery and the proposed limitations on depositions.

It is so **ORDERED**.

BY THE COURT:



GENE E.K. PRATTER  
United States District Judge